

The Burger Court Opinion Writing Database

Blue Chip Stamps v. Manor Drug Stores
421 U.S. 723 (1975)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University in St. Louis
Forrest Maltzman, George Washington University



Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

May 29, 1975

Re: No. 74-124 - Blue Chip Stamps v. Manor Drug Stores

Dear Bill:

Please join me.

Regards,

W. B.

Mr. Justice Rehnquist

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

June 2, 1975

Dear Harry:

Kindly join me in your dissent
in BLUE CHIP v. MANOR DRUG STORES, 74-124.

WOD/Sandra

William O. Douglas

Mr. Justice Blackmun

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

April 1, 1975

RE: No. 74-124 Blue Chip Stamps v. Manor
Drug Stores, etc.

Dear Harry:

I note that Thurgood, you and I are in dissent in the above which has been assigned to Bill Rehnquist. Would you be willing to undertake the dissent?

Sincerely,



Mr. Justice Blackmun



Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

May 27, 1975

RE: No. 74-124 Blue Chip Stamps v. Manor Drug Stores, etc.

Dear Harry:

Please join me in your fine dissent.

Sincerely,



Mr. Justice Blackmun

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE POTTER STEWART

May 12, 1975

74-124 - Blue Chip Stamps, et al.
v. Manor Drug Stores, Etc.

Dear Bill,

I am glad to join your opinion for the
Court in this case.

Sincerely yours,

P.S.

Mr. Justice Rehnquist

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE POTTER STEWART

June 4, 1975

Re: No. 74-124, Blue Chip Stamps v. Manor Drug
Stores

Dear Lewis,

I should appreciate your adding my name to your
concurring opinion in this case.

Sincerely yours,

P. S.

Mr. Justice Powell

Copies to the Conference

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE POTTER STEWART

June 5, 1975

No. 74-124 - Blue Chip Stamps v. Manor
Drug Stores, Etc.

Dear Lewis,

I think Part II in your amended concurring opinion is fine, and gladly join it. I have noted in pencil on page 1 of the enclosed copy an extremely minor suggestion.

Sincerely yours,

P.S.
P.S.

Mr. Justice Powell

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

May 16, 1975

Re: No. 74-124 - Blue Chip Stamps v. Manor
Drug Stores

Dear Bill:

Please join me.

Sincerely,



Mr. Justice Rehnquist

Copies to Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

May 12, 1975

Re: No. 74-124 -- Blue Chip Stamps v. Manor Drug Stores

Dear Bill:

I shall wait to see Harry's dissent.

Sincerely,



T. M.

Mr. Justice Rehnquist

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 2, 1975

Re: No. 74-124, Blue Chip Stamps v. Manor Drug Stores

Dear Lewis:

Please join me.

Sincerely,

T. M.
T. M.

Mr. Justice Powell

cc: The Conference

April 7, 1975

Re: No. 74-124 - Blue Chip Stamps v. Manor Drug Stores

Dear Bill:

I have your note of April 1 and shall be glad to take
on the dissent in this case.

Sincerely,

HAB

Mr. Justice Brennan

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

May 9, 1975

Re: No. 74-124 - Blue Chip Stamps v. Manor Drug Stores

Dear Bill:

In due course I shall be writing a dissenting opinion for this case.

Sincerely,



Mr. Justice Rehnquist

cc: The Conference

May 23, 1975

Re: No. 74-124 - Blue Chip Stamps v. Manor
Drug Stores

Dear Bill:

In the handwritten note you gave me on the bench on April 14, you instructed me not to exceed the length of the majority opinion. I have had this in mind, but try as I may, I have not been able to come up with 30 pages.

In order to save time for your chambers, I enclose a copy of a dissent I am sending to the Printer today. I suppose it will be ready for circulation some time the first of the week.

Sincerely,

MRB

Mr. Justice Rehnquist

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Powell
Mr. Justice Rehnquist

From: Blackmun, J.

Circulated: 5/27/75

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 74-124

Blue Chip Stamps et al.,
Petitioners,
v.
Manor Drug Stores, Etc. } On Writ of Certiorari to the
United States Court of Appeals for the Ninth Circuit.

[June —, 1975]

MR. JUSTICE BLACKBURN, dissenting.

Today the Court graves into stone *Birnbaum*'s¹ arbitrary principle of standing. For this task the Court, unfortunately, chooses to utilize three blunt chisels: (1) reliance on the legislative history of the 1933 and 1934 Securities Acts, conceded as inconclusive in this particular context; (2) acceptance as precedent of two decades of lower court decisions following a doctrine, never before examined here, that was pronounced by a justifiably esteemed panel of that Court of Appeals regarded as the "Mother Court" in this area of the law,² but under entirely different circumstances; and (3) resort to utter pragmatism and a conjectural assertion of "policy considerations" deemed to arise in distinguishing the ~~meritorious~~ Rule 10b-5 suit from the meretricious one. In so doing, the Court exhibits a preternatural solicitousness for corporate well-being and a seeming callousness toward the investing public quite out of keeping, it seems to me, with our own traditions and the intent of the securities laws. See *Affiliated Ute*

¹ *Birnbaum v. Newport Steel Corp.*, 193 F. 2d 461 (CA2), cert. denied, 343 U. S. 956 (1952).

² Just this Term, however, we did not view with such tender regard another decision by the very same panel. See *United States v. Feola*, — U. S. — (1975), and its treatment of an analogy advanced in *United States v. Crimmins*, 123 F. 2d 271 (CA2 1941).

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Powell
Mr. Justice Rehnquist

From: Blackmun, J.

Circulated:

Recirculated: 6/2/75

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 74-124

Blue Chip Stamps et al., Petitioners,
v.
Manor Drug Stores, Etc. } On Writ of Certiorari to the
United States Court of Appeals for the Ninth Circuit.

[June —, 1975]

MR. JUSTICE BLACKMUN, with whom MR. JUSTICE BRENNAN joins, dissenting.

Today the Court graves into stone *Birnbaum*'s¹ arbitrary principle of standing. For this task the Court, unfortunately, chooses to utilize three blunt chisels: (1) reliance on the legislative history of the 1933 and 1934 Securities Acts, conceded as inconclusive in this particular context; (2) acceptance as precedent of two decades of lower court decisions following a doctrine, never before examined here, that was pronounced by a justifiably esteemed panel of that Court of Appeals regarded as the "Mother Court" in this area of the law;² but under entirely different circumstances; and (3) resort to utter pragmatism and a conjectural assertion of "policy considerations" deemed to arise in distinguishing the meritorious Rule 10b-5 suit from the meretricious one. In so doing, the Court exhibits a preternatural solicitousness for corporate well-being and a seeming callousness toward the investing public quite out of keeping, it seems to me, with our own traditions and the intent of the securities laws. See *Affiliated Ute*

¹ *Birnbaum v. Newport Steel Corp.*, 193 F. 2d 461 (CA2), cert. denied, 343 U. S. 956 (1952).

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

May 13, 1975

No. 74-124 Blue Chip Stamps v.
Manor Drug Stores

Dear Bill:

Please join me.

Sincerely,

Lewis

Mr. Justice Rehnquist

lfp/ss

cc: The Conference

✓ LFP
1st DRAFT

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Rehnquist

From: Powell, J.

Circulated: MAY 4 0 1975

Recirculated: _____

SUPREME COURT OF THE UNITED STATES

No. 74-124

Blue Chip Stamps et al.,
Petitioners, } On Writ of Certiorari to the
v. } United States Court of Ap-
Manor Drug Stores, Etc. } peals for the Ninth Circuit.

[May --, 1975]

MR. JUSTICE POWELL, concurring.

Although I concur in the opinion of the Court, I write to emphasize the significance of the texts of the Acts of 1933 and 1934 and especially the language of § 10 (b) and Rule 10b-5.

The starting point in every case involving construction of a statute is the language itself. The critical phrase in both the statute and the rule is "in connection with the *purchase or sale* of any security." 15 U. S. C. § 78j (b); 17 CFR § 240.10b-5 (italics added). Section 3a (14) of the 1934 Act, 15 U. S. C. § 78o (a)(14), provides that the term "sale" shall "include any contract to sell or otherwise dispose of" securities. There is no hint in any provision of the Act that the term "sale," as used in § 10 (b), was intended—in addition to its long-established legal meaning—to include an "offer to sell." Respondent, nevertheless, would have us amend the controlling language in § 10 (b) to read:

"... in connection with the purchase or sale of, or an offer to sell, any security."

Before a court properly could consider taking such liberty with statutory language there should be, at least, unmistakable support in the history and structure of the legislation. None exists in this case.

June 4, 1975

No. 74-124 Blue Chip Stamps v.
Manor Drug Stores, Etc.

Dear Potter:

Thank you for joining my concurring opinion. You may recall our conversation about the majority being charged with "callousness toward the investing public". I enclose a second draft of my concurring opinion, in which I respond to Harry's charges.

I have not yet circulated this draft, and would appreciate your views.

Sincerely,

Mr. Justice Stewart

lfp/ss

PP 1,4,5-7

1514

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Rehnquist

From: Powell, J.

Circulated:

2nd DRAFT

Recirculated: JUN 5 1975

SUPREME COURT OF THE UNITED STATES

No. 74-124

Blue Chip Stamps et al.,
Petitioners,
v.
Manor Drug Stores, Etc. } On Writ of Certiorari to the
United States Court of Appeals for the Ninth Circuit.

[May —, 1975]
MR. JUSTICE POWELL, concurring.

with whom MR. JUSTICE STEWART and
MR. JUSTICE MARSHALL join,

Although I ~~concur~~ in the opinion of the Court, I write to emphasize the significance of the texts of the Acts of 1933 and 1934 and especially the language of § 10 (b) and Rule 10b-5.

I

The starting point in every case involving construction of a statute is the language itself. The critical phrase in both the statute and the rule is "in connection with the *purchase or sale* of any security." 15 U. S. C. § 78j (b); 17 CFR § 240.10b-5 (italics added). Section 3a (14) of the 1934 Act, 15 U. S. C. § 78c (a)(14), provides that the term "sale" shall "include any contract to sell or otherwise dispose of" securities. There is no hint in any provision of the Act that the term "sale," as used in § 10 (b), was intended—in addition to its long-established legal meaning—to include an "offer to sell." Respondent, nevertheless, would have us amend the controlling language in § 10 (b) to read:

"... in connection with the purchase or sale of, or an offer to sell, any security."

Before a court properly could consider taking such liberty with statutory language there should be, at least, unmistakable support in the history and structure of the legislation. None exists in this case.

74-124

Supreme Court of the United States

Memorandum

Harry — 4-14, 1975

In Blue Chip I will
agree to write a short
& unconvincing majority
opinion if you will promise
to write a short & un-
convincing dissent. We
will both save time

Biel & R

To: The Chief Justice
Mr. Justice ~~White~~
Mr. Justice ~~White~~
Mr. Justice ~~White~~
Mr. Justice ~~White~~
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell

From: Rehnquist, J.

Circulated: 5-9-75

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 74-124

Blue Chip Stamps et al.,
Petitioners,
v.
Manor Drug Stores, Etc. } On Writ of Certiorari to the
United States Court of Appeals for the Ninth Circuit.

[May —, 1975]

MR. JUSTICE REHNQUIST delivered the opinion of the Court.

This case requires us to consider whether the offerees of a stock offering, made pursuant to an antitrust consent decree and registered under the Securities Act of 1933, 15 U. S. C. § 77a *et seq.* ("the 1933 Act"), may maintain a private cause of action for money damages where they allege that the offeror has violated the provisions of Rule 10b-5 of the Securities and Exchange Commission, but where they have neither purchased nor sold any of the offered shares. See *Birnbaum v. Newport Steel Corp.*, 193 F. 2d 461 (CA2), cert. denied, 343 U. S. 956 (1952).

I

In 1963 the United States filed a civil antitrust action against Blue Chip Stamp Company ("Old Blue Chip"), a company in the business of providing trading stamps to retailers, and nine retailers who owned 90% of its shares. In 1967 the action was terminated by the entry of a consent decree. *United States v. Blue Chip Stamp Co.*, 272 F. Supp. 432 (CD Cal. 1967), aff'd *sub nom. Thrifty Shoppers Script Co. v. United States*, 389 U. S. 580

15, 26

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell

From: Rehnquist, J.

Circulated:

Recirculated: MAY 19 1975

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

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P.12, m.7

151-7

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell

From: Rehnquist, J.

Circulated: 5-9

Recirculated: 5-27

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 74-124

Blue Chip Stamps et al.,
Petitioners,
v.
Manor Drug Stores, Etc. } On Writ of Certiorari to the
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[May —, 1975]

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P, 9, 13, 25

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell

From: Rehnquist, J.

Circulated: 5 - 9Recirculated: 5 - 28

4th DRAFT

SUPREME COURT OF THE UNITED STATES

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Blue Chip Stamps et al.,
Petitioners, } On Writ of Certiorari to the
v. } United States Court of Ap-
Manor Drug Stores, Etc. } peals for the Ninth Circuit.

[May —, 1975]

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P. 23, 24

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell

5th DRAFT

SUPREME COURT OF THE UNITED STATES

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Blue Chip Stamps et al.,
Petitioners, } On Writ of Certiorari to the
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[May —, 1975]

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